



STATE BOARD OF EQUALIZATION

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Executive Secretary

October 24, 1986

This letter is in response to a request from Chief of the Assessment Standards Division, for our advice concerning the transfer of the above-designated property to a partnership. The facts as set forth in a letter to your office from , the attorney for the taxpayers, are as follows:

On March 7, 1980, a grant deed transferring the subject property to P and V , husband and wife, as joint tenants, as to an undivided 25 percent interest, A. and H. , husband and wife, as joint tenants, as to an undivided 25 percent interest, and L an unmarried man, as to an undivided 25 percent interest, was recorded in Nevada County. Although the property was held by each of the married transferees in joint tenancy with their respective spouses, the three husbands and the unmarried man were conducting a business of developing and improving the land for later sale. Because of the inconvenience of obtaining the wives' signatures on transfers and conveyances, the parties decided in mid-1981 to formalize their arrangement and operate as the Estates Partnership. Mr. R determined that all seven of the parties who held title should execute a quitclaim deed in favor of the partnership. A quitclaim deed was prepared and forwarded for signatures on August 24, 1981, but was never signed or returned to Mr. R.

On August 21, 1981, Mr. R forwarded the Statement of Partnership to County for recording. The Statement of Partnership was recorded on August 24, 1981, declaring that the partners in Estates are P , A. S and L. Mr. R has recently learned that the quitclaim deed to the partnership

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was never signed or recorded and that the record title is still held in the names of the seven individuals. Mr. R. is concerned that recording a quitclaim deed now may trigger a reappraisal of the property.

As stated above, title to the property is presently held in the name of seven individuals. When husband and wife take title to property as joint tenants, the ownership interest of a spouse is the separate property of the spouse. (Watson v. Peyton (1937) 10 Cal.2d 156, 159.) Therefore, the issue raised in a transfer of this property to a partnership is the issue of proportionality. Revenue and Taxation Code section 61(i) provides that the transfer of property to a legal entity is a change in ownership. An exception to this general rule is found in section 62(a)(2). Section 62(a)(2) excludes any transfer between individuals and a legal entity which results solely in a change in the method of holding title to the real property and in which the proportional ownership interests remain the same after the transfer. The issue of proportionality arises because seven individuals will be contributing property to a partnership in which only four of them are partners.

We believe that the present case is the type of transaction which the Legislature intended to be covered by the exclusion provided by section 62(a)(2). However, the transfer must comply with section 62(a)(2) in form as well as in principle.

If the wives continue to hold their interests in the property in joint tenancy with their husbands, any transfer of the entire property to a partnership which does not include the wives as partners will be disproportionate because each wife holds a 1/8 interest in the property as her separate property. If she quitclaims her ownership interest in the property to the partnership, before the transfer she owns a 1/8 interest in the property, and, after the transfer, she owns no interest in the property because she is not a partner. Therefore, in order to make the transfer of the entire property proportional, it is our advisory opinion that one of two steps may be taken:

1. A wife may quitclaim her interest to her husband. This would be excluded as an interspousal transfer under section 63. The husband may then transfer his 1/4 interest in the property for a 1/4 interest in the partnership in a transaction excluded under section 62(a)(2); or,
2. A husband and wife may transmute their interest held in joint tenancy to community property. When husband and wife take title as community property, the

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ownership interests of the spouses are "present, existing, and equal." (Civ. Code § 5105.) This does not amount to an effective separate one-half interest of each, except at dissolution of the marriage. (Civ. Code § 4800.) It is our opinion that the transfer by the husband of a 1/4 interest in the property held as community property in exchange for a 1/4 partnership interest would be proportional.

This letter should not be construed as an attempt to advise any party as to the community property or separate property status of his or her particular interest. Further, our opinion is advisory only. If you have any questions or wish to discuss this further, please contact me.

Very truly yours,

Michele F. Hicks

Michele F. Hicks
Tax Counsel

MFH:cb
0219D

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Mr. Don Davis